



STAFF PRESENT:

Stephanie D. Brown, Office of Zoning  
Alberto Bastida, Office of Planning  
Dave Colby, Office of Planning

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I-N-D-E-X

Preliminary Matters	4
Presentation by Dave Colby, Office of Planning	7
Commission Questions	27

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P-R-O-C-E-E-D-I-N-G-S

(7:07 p.m.)

COMMISSIONER PARSONS: Good evening, lady.  
You're supposed to say "ladies and gentlemen," but I just  
can't bring myself to that.

I'm John Parsons, Acting Chairperson of the  
Zoning Commission for the District of Columbia, and joining me  
tonight are Mr. Franklin, Mr. Hood, and we expect Ms. Kress  
shortly, and she will take over the proceedings as she  
arrives.

I declare this public hearing open.  
The case that is the subject of this hearing is  
Case 98-8.

Over the past several years the BZA has been  
requested to avoid -- to approve -- excuse me -- to approve  
special exceptions for a number of child development centers  
with programs and uses not previously accommodated in CDCs,  
which typically provide various types of day care for children  
under the ages of 15.

Those additional uses have included adult  
education, adult counseling, parent classes, and senior day  
care in individual and group sessions.

To accommodate these new use combinations, the  
BZA has requested the Zoning Commission to review and amend  
the zoning regulations as appropriate to permit new uses,  
presume --

1 (Laughter.)

2 PARTICIPANT: Now you've gotten him nervous.

3 COMMISSIONER PARSONS: -- to permit new uses --

4 CHAIRPERSON KRESS: I'm sorry.

5 (Laughter.)

6 COMMISSIONER PARSONS: -- with BZA approval in  
7 residential zone districts.

8 The Zoning Commission will consider the  
9 advertised proposal, any modifications thereto, or alternative  
10 proposals that are presented and reasonably related to the  
11 scope of the proposed amendments. The specific proposal to  
12 amend the zoning regulations is contained in the notice of  
13 public hearing for this case. Copies of that notice are  
14 available for the public.

15 Notice of today's hearing was published in the  
16 D.C. Register on January 29th, 1999, in the Washington Times  
17 on January 26th.

18 This hearing will be conducted in accordance with  
19 the provisions of 3021 of the District of Columbia Municipal  
20 Regulations.

21 The order of procedure will be as follows:  
22 preliminary matters; Office of Planning report; report of  
23 other agencies; reports of the Advisory Neighborhood  
24 Commissions; persons in support; and then persons in  
25 opposition.

26 The Commission will adhere to this schedule as

1 strictly as possible.

2 Those presenting testimony should be brief and

3 nonrepetitive. If you have a prepared statement, you should

4 give copies to the staff and orally summarize the highlights.

5 Please give us your statement before summarizing.

6 Each individual appearing before the Commission

7 must complete two identification slips and submit them to the

8 reporter at the time you make your statement. If these

9 guidelines are followed, an adequate record can be developed

10 in a reasonable length of time.

11 And I'm pleased to announce that Ms. Kress has

12 joined us, and I will turn over the chair to her.

13 CHAIRPERSON KRESS: Please stay.

14 COMMISSIONER PARSONS: Well, that microphone

15 probably doesn't work.

16 (Laughter.)

17 COMMISSIONER PARSONS: So you might want to

18 check it before you --

19 CHAIRPERSON KRESS: Well, how about this one?

20 Nobody is sitting --

21 COMMISSIONER PARSONS: We haven't pushed the

22 button.

23 CHAIRPERSON KRESS: Oh, it is here. Okay.

24 We'll play musical chairs. I was at another meeting and ran

25 late.

26 Thank you.

1 Are there any preliminary matters?

2 MR. BASTIDA: Madame Chairperson, the staff has  
3 no preliminary matters.

4 I would like to point out that we had just  
5 prepared a reminder schedule that is in front of you with up  
6 to date with all of the cases that you have set down for  
7 hearing.

8 CHAIRPERSON KRESS: Thank you.

9 MR. BASTIDA: Thank you.

10 CHAIRPERSON KRESS: With that we'll move to the  
11 Office of Planning, Mr. Colby.

12 MR. COLBY: Thank you, Madame Chair and  
13 Commissioners.

14 I'm going to -- well, first, I guess I've given  
15 this background before, but let me do it again.

16 This report started or this process on child  
17 development centers text amendment started before Nate Gross  
18 left the office, some time before that; has been in the office  
19 for a great length of time. The person who worked on it has  
20 since retired. It sounds like it's been in the office for  
21 years, but actually it's probably a year and a half.

22 And I'm going to start by I'm going to just  
23 summarize and read little snippets from the report to try  
24 because you've had an opportunity to read it, and I'm going to  
25 assume you have.

26 CHAIRPERSON KRESS: Yeah, I would assume we have

1 read it and also that we have talked about it several times  
2 before.

3 MR. COLBY: Yeah.

4 CHAIRPERSON KRESS: Maybe all of the members  
5 haven't, but --

6 MR. COLBY: Okay. Then I'm going to start by --  
7 I think the report starts out complicating the issue. It  
8 seems to, as I read it again and reread it, and I may have had  
9 something to do with that in terms of my critique of the work  
10 as it was being done by Bill Johnson, but I'm going to start  
11 by complicating it as the report does, and then I hope  
12 simplifying it as we get toward the end, and I certainly don't  
13 plan to read it.

14 The most common combination of uses coming to  
15 the Board has been a mixture of child day care and counseling  
16 for parents, and currently varying levels of such counseling  
17 are provided at many centers as the needs occur, and these are  
18 or have been, tended to be informal counseling services and  
19 not necessarily part of the structured program of the  
20 caregiver.

21 But when services are provided, community  
22 concerns have been raised in the past and are raised.

23 The report starts out with sort of two sort of  
24 traditional day care/child care center models. The first is  
25 the basic day care where it all started, presumably with two  
26 income families in which both parents worked a traditional



1 schedule, and facilities came into being to deal with that and  
2 take care of young children.

3 And it's grown from that. The child development  
4 center model, I guess, followed onto that, still relatively  
5 straightforward, providing more space, more activities,  
6 generally larger. These tended to come out of the home or  
7 moved away from the home and had a variety of impacts on  
8 neighborhoods in most of these the Board sees.

9 All child care facilities must be licensed, and  
10 with the exception of the child day care home, all facilities  
11 must have a valid C of O.

12 Emerging trends, and there are multi-service  
13 care centers, I suppose, one of the emerging trends, and there  
14 are many of these in the District, and they include the Mazik  
15 Parent-Child Center, Rosemont Center, and so on and so on.

16 These multi-service centers may include a CDC, a  
17 school, a clinic, counseling services. They are what their  
18 name suggests, really a multiple, more than day care by far.

19 Then elderly day care is another emerging need  
20 and service, similar in many aspects to CDCs. It's  
21 interesting to note on average, and this of course is across  
22 the country, centers have a capacity for 38 individuals, an  
23 enrollment of 44, which would presume or would appear to  
24 exceed the capacity, but a daily attendance of only 22.

25 Adult day care, as you might imagine, is one of  
26 the fastest growing sectors of day care, in any case, in the

1 U.S., and in the District elderly day care is supplied  
2 primarily through programs available through the D.C. Office  
3 on Aging, through religious and private organization, and  
4 individual home sites.

5 Intergenerational day care is another changing  
6 aspect of day care. The literature supports it highly, where  
7 elderly and child care are performed, and there's some  
8 positive feedback between the two groups. It offers the  
9 potential for cost savings, interaction between young and old,  
10 and the added convenience of one drop-off for a guardian of  
11 both an elderly parent and a young child where that kind of  
12 generational situation occurs.

13 Nontraditional hours care is another emerging  
14 aspect of day care. I read about this in the newspapers and  
15 throughout the region, where more and more the parents need a  
16 place to keep a child or an elderly parent, including in some  
17 cases, I think, around the clock, but in many cases Saturdays,  
18 Sundays, and hours other than school hours.

19 Existing controls. Licensing. There are  
20 licensing controls as I've said. These regulations define  
21 child development facilities as those locations where a child  
22 development program is provided for infants and children away  
23 from home for less than 24 hours per day for each infant or  
24 child. That's not unlike the way the zoning regulations  
25 define it.

26 A valid C of O and license are required to

1 operate a child care facility.

2 Currently elderly day care is not regulated by  
3 licensure, but a C of O is required to operate an elderly day  
4 care center.

5 Zoning. Existing zoning permits a child  
6 development home in an R-1 district as a matter of right for  
7 up to five children. That's the basic unit. The home is.  
8 Five children, 15 years of age or less, provided the care is  
9 less than 24 hours as an accessory use.

10 Section 205 permits a child development center,  
11 the next step up, for six or more individuals 15 years of age  
12 or less, again, for less than 24 hours of care in an R-1  
13 district, if approved by the Board.

14 Section 205 contains a number of general  
15 guidelines that are intended to limit adverse impacts on the  
16 surrounding neighborhood and provide safety for the children  
17 and, of course, provide guidance to the Board.

18 The zoning regulations, however, do not regulate  
19 the types of programs that are provided in the child  
20 development center. They don't tend to micromanage, if you  
21 will, and maybe they don't say quite enough, nor do they  
22 define those programs other than a reference to care,  
23 education, and training.

24 The regulations are silent also about  
25 combinations of child development and elderly day care.

26 Under zoning, elderly day care centers are not

1 specifically defined, but are first permitted as a matter of  
2 right in the District in the C-1 zoned district. They're also  
3 permitted in the R-4 zone, with BZA approval in a temporary  
4 community center, and everything, I guess, just about is  
5 permitted in a community center in an R-1 zone as a nonprofit  
6 community activity with BZA approval.

7 I'm on page 7 of our report.

8 We tried to create the problem basically by  
9 pushing the envelop and describing more and more, I mean, day  
10 care situations with higher and higher impacts, starting with  
11 the traditional day care home, which I've described.

12 Counseling, while critical in addressing skill  
13 and social deficiencies, is a service most home and small  
14 caregivers are not able to provide. It's essentially a  
15 nonissue, it would appear, in home day care.

16 Day care and child development centers within  
17 formal counseling of parents is the next step up.  
18 Professional counseling, while not permitted under the current  
19 zoning regulations, is acknowledged in the child day care  
20 field to be of critical importance.

21 Counseling is also needed to stimulate the  
22 involvement of parents, caregivers, and caregivers fulfill  
23 that need now by providing informal guidance and advice and/or  
24 education to the parents.

25 There are limited impacts on the neighborhood;  
26 because of the way that is handled, can be easily assessed in

1 a special exception process if the activity is to be permitted  
2 under zoning, and currently it is not. In fact, most  
3 caregivers only follow the licensing procedures now and have  
4 no idea that there might be a zoning problem with providing  
5 counseling to their care receivers, parents, and guardians.

6 The third step up now is day care with  
7 professional counseling of parents. Currently professional  
8 counseling is not permitted under the zoning regulations, and  
9 for it to occur legally -- this is as opposed to informal  
10 counseling -- for it to occur legally would require  
11 modification of the regulations.

12 In the future, limited professional counseling,  
13 we believe, should be permitted in all child care venues other  
14 than child care homes, including CDCs, community centers, and  
15 community service centers.

16 The impact of counseling on the neighborhood  
17 would likely be minimal and subject to review by the Board of  
18 Zoning Adjustment, and we'll get into that further in a  
19 moment.

20 Then stepping up further, counseling of parents,  
21 but with associated day care, where day care is not the  
22 primary use. This is stretching it because this is like any  
23 other use with day care associated, but in this case, we feel  
24 that the potential for increased pedestrian and increased  
25 vehicular traffic suggests zone districts less restrictive or  
26 that it not be permitted in the R-1 through R-4 zones; that

1       it's crossed the line basically; that primary counseling of  
2       parents with associated day care is a relatively intensive  
3       use, and we can get into how that might be accommodated in a  
4       moment.

5                   Elderly day care, as we've said, we believe is  
6       very similar in many ways, and I guess I was hoping there  
7       would be more people in the audience to speak to this, to tell  
8       me where I'm wrong, but that like child day care, there's the  
9       same drop-off, the same need as in the case of child  
10      development centers some counselors, some psychologists, some  
11      medical care.

12                   It's permitted currently in the R-4 zone with  
13      BZA approval as a temporary community service center and  
14      permitted, again, in the community center in an R-1 zone.

15                   Elderly day care, as we've said, is, we think,  
16      very similar to child day care, and I might note that while I  
17      don't live in the District, I was surprised to hear that I've  
18      got four or five houses away an elderly day care home that I  
19      didn't know was there. I mean I had no idea, maybe because  
20      it's four houses away and the elderly don't --

21                   CHAIRPERSON KRESS: Make a lot of noise playing.

22                   COMMISSIONER PARSONS: Or move very fast or far.

23                   Combined elderly day care and child care,  
24      intergenerational day care, if the two are similar, then  
25      mixing the two, provided there's enough space and licensing is  
26      followed, would not appear to create any additional problems.

1                   Then we've added at the bottom of page 9 a  
2           notion that some caregivers are interested in giving up or not  
3           having to apply for C of Os for child development centers in  
4           public schools. Apparently the government would like to keep  
5           those. They feel there's some value in it, and the industry  
6           would like to get rid of them, feeling that they have no need,  
7           that it's inequitable.

8                   A C of O is not required for a child development  
9           center in a public school when it's under the control of the  
10          school system.

11                  We've added on other -- pulled out one separate  
12          issue, parking in regard to all of these. If there's a  
13          potential parking issue, it probably relates to the means of  
14          access to the child development centers for parents and  
15          guardians who are involved in counseling, training, or  
16          educational programs. We believe that required parking can be  
17          assigned to a facility on the basis either of the number of  
18          persons identified, which is probably the best way, identified  
19          as likely to undergo counseling or training or education, or  
20          on the basis of space, which we think is probably not an  
21          appropriate way to deal with that.

22                  The working assumption in the industry is that  
23          most of these programs will occur in neighborhoods in which  
24          automobile ownership is less likely, and people will get to  
25          the center by means other than private automobile, that is to  
26          say, those with heavy counseling.

1                   And finally, there's the issue of the  
2                   elimination of the temporary nature of a, quote, temporary  
3                   community service center. The Commission specifically asked  
4                   the Office of Planning, the former chair, as I recall, to  
5                   evaluate the possibility of eliminating the temporary aspect  
6                   of temporary community service center, which is first  
7                   permitted in the R-4 zone with BZA approval.

8                   The basic problem in the use of temporary is  
9                   that, well, it was apparently designed for community serving  
10                  uses which would likely have potential adverse impacts, and so  
11                  it gave the Board a chance to assign or to have a time certain  
12                  period at which time it would either go away or, I guess, be  
13                  repermitted.

14                 However, the temporary nature of the center  
15                 creates problems because it not only invites uses which tend  
16                 to be too intense because they're just temporary, and it also  
17                 tends to create a negative attitude in the community about a  
18                 use which may be seen as a short-term use and, therefore,  
19                 intrusive.

20                 For better or worse, a permanent use would  
21                 likely be represented as good for the long term and be  
22                 received seriously, even when not favorably, by the community.

23                 Now I'm going to simplify all of that.

24                 (Laughter.)

25                 MR. COLBY: We're really looking to change very  
26                 little. Most traditional child development centers can be



1 accommodated under the existing zoning regulations in the R-1  
2 and less restrictive zones with Board approval. Several  
3 innovative programs reviewed in hearings before the Board were  
4 either not allowed or raised concerns. The following  
5 modifications are proposed to assist the Board.

6 First, the text of the regulations for the  
7 appropriate zone districts needs to be modified to add elderly  
8 day care, and in fact, the first -- almost every one of the  
9 changes deals with that, except for one important change.

10 Second, the zoning definitions in Section 199  
11 need to be modified to allow counseling and other services to  
12 parents of children in child development centers when approved  
13 by the Board, as well as intergenerational use of these  
14 facilities.

15 We do not recommend an additional parking  
16 requirement.

17 Third, the zoning definitions in Section 199  
18 need to be modified to define elderly day care, essentially as  
19 we defined child day care, child care now.

20 And finally, we recommend removing the temporary  
21 aspect of community service center.

22 So let me just run quickly down through the nine  
23 -- through the however many, 11, 12, 13, 13 proposed  
24 amendments very quickly.

25 The first, just as a definition for elderly day  
26 care, which follows the same requirements for a day care home,

1 as does the child development home now. So however that  
2 language ends up, that is strictly to include elderly day care  
3 or permit elderly day care in the home as child care is now  
4 permitted.

5 The second one renumbers some sections,  
6 subsections.

7 The third one just adds elderly day care in the  
8 R-1 district to child development centers, to have elderly day  
9 care centers and child development centers be treated alike  
10 and with the same guidance to the Board.

11 The fourth one is elderly again in the R-4  
12 districts. It just includes elderly care, as is child care  
13 currently treated, in the R-4 district.

14 The next, five is the R-5 district.

15 The next one is in the SP district.

16 Number seven is the CR district.

17 And eight is the C-1 district, again, treating  
18 elderly day care in a fashion similar to child development,  
19 either home or center.

20 And number nine would continue that to other  
21 commercial zones as necessary.

22 Okay. Number ten is the first -- beyond the  
23 elderly -- is the first significant change where a child  
24 development center could or would be permitted to have  
25 counseling, education, training, and health and social  
26 services provided to the parents or principal guardians of the

1 children attending the center.

2 In addition, with appropriate staffing and  
3 building the recreational spaces to respond to the needs of  
4 the two groups, the facility may be used for intergenerational  
5 care, elderly day care and child development.

6 So it builds in the elderly day care, but the  
7 key point there is that counseling would be permitted in a  
8 child development center, which is now currently permitted by  
9 the Board in the R-4 and more intense zones.

10 Then the next, elderly day care center is a  
11 definition for such a center which really follows on, again,  
12 the definition for a child development center, and elderly day  
13 care in your home similarly follows the pattern of the child  
14 care home.

15 Number 11 is the special exception, again,  
16 builds in elder care.

17 Number 12, off-street parking, again, builds in  
18 elder care, relates it to child development centers and child  
19 development homes.

20 And number 13 takes the temporary aspect out of  
21 the cumulative service center. As you'll see in 334.1, a  
22 temporary community service center is a place where not only  
23 child care can occur, but job training, family counseling,  
24 consumer cooperatives, and all other manner of activities that  
25 a family might -- reaching out to families, and again, it gets  
26 rid of the temporary nature of those and removes the time not

1 to exceed three-year aspect of those regulations.

2 Let me end with a chart, Exhibit 1, and I will  
3 simplify this. If you look starting at the child development  
4 home row, that exists. Child development center, that exists;  
5 no change, no change other than in the definition of a child  
6 development center. Child development center, school or  
7 recreation center, that exists.

8 The next row down, elderly day care home is new,  
9 but it's patterned on the child development home. Elderly day  
10 care center is new patterned on the child development center.  
11 Community center, neighborhood nonprofit, that exists.  
12 Community service center, neighborhood nonprofit, that exists,  
13 but we would be eliminating the temporary nature of it, and  
14 church day care center exists.

15 So when you wade through all that you ever  
16 wanted to know about federal programs and child day care  
17 centers and where this is going and where it's been, the  
18 changes are fairly simple, and whether or not we've made the  
19 right recommendations in terms of parking and in terms of  
20 other impacts for these centers and what is really involved  
21 and can the Board know that, and the Board had better know  
22 that, for kinds of programs that these centers will have in  
23 order to set out, define the limits of what can and cannot  
24 occur in a given neighborhood.

25 And with that, I will stop. You'll note  
26 attached we haven't asked for agency reports, and we don't

1 actually have agency reports, as such, although I think what's  
2 attached you could consider a significant agency input and  
3 comment on this proposal.

4 So let me stop there and take any questions.

5 CHAIRPERSON KRESS: Well, let me just continue  
6 with that thought because that is my most major question.  
7 This is dated May of 1998. As I was comparing some issues,  
8 most of the prime issues that were clear and clean were dealt  
9 with, but there were some issues that for various reasons, and  
10 I can see where they were good reasons, were not included.

11 My question remains though. This communication  
12 is May of '98.

13 MR. COLBY: Right.

14 CHAIRPERSON KRESS: This is almost a year old.

15 MR. COLBY: Yes.

16 CHAIRPERSON KRESS: Has there been continuing  
17 dialogue?

18 MR. COLBY: No, no.

19 CHAIRPERSON KRESS: This was finished then and  
20 we -- I guess I'm kind of concerned, and I don't know. We  
21 have one individual here, but I don't know if there has been  
22 any further communication after this and --

23 MR. COLBY: There has been for --

24 CHAIRPERSON KRESS: -- the change, the changes  
25 that you made after the letter dated May 20th.

26 MR. COLBY: There has been additional

1 communication, but not by me recently, one. It was by Bill,  
2 and so none in the last couple of months.

3 Secondly --

4 CHAIRPERSON KRESS: But my question is  
5 subsequent from the licensing memo of May 20th, the changes  
6 were made to your --

7 MR. COLBY: We made changes on the basis of this  
8 letter and Bill started to respond, and it got so complex, the  
9 response, that I tried to simplify it, and then he got bogged  
10 down in it, and then finally he retired for medical purposes.

11 CHAIRPERSON KRESS: But they have seen the --  
12 whatever you incorporated was sent, and they have had an  
13 opportunity to review it again or not?

14 MR. COLBY: They have not had an opportunity.  
15 Well, they have not been presented with an opportunity --

16 CHAIRPERSON KRESS: Formally, un-huh.

17 MR. COLBY: -- because we never sent that letter  
18 to say, "This is what we can do, and this is what we can't  
19 do." And we should have carried that out. That was some time  
20 ago actually. It goes back to May, as you pointed out.

21 I feel comfortable that we have met -- I'm more  
22 concerned that there are other changes in licensing that are  
23 going on that I, frankly, don't know where they've ended up.

24 CHAIRPERSON KRESS: Yeah, I think don't they've  
25 completed their licensing. I don't know, but I don't know  
26 that they've completed their licensing changes.

1 MR. COLBY: I don't think so because I think I  
2 would have heard.

3 CHAIRPERSON KRESS: And that's why I'm wondering  
4 whether we should formally, you know, leave the record open  
5 and ask them to formally respond once again because you have  
6 done quite a few things that they've asked.

7 MR. COLBY: I would be pleased if you would  
8 leave it open for that, and I would feel a little less guilty  
9 at not having responded originally and not having had time to  
10 respond, and then in any case I would like --

11 CHAIRPERSON KRESS: And I don't think we need to  
12 spend the time responding to the May 20th letter. I think  
13 it's a matter of --

14 MR. COLBY: Just sending out the --

15 CHAIRPERSON KRESS: -- send them the revision  
16 and saying, "You were not at the hearing, and we've left the  
17 record open to receive your report as a related government  
18 agency."

19 MR. COLBY: Right. And there was another major  
20 input person who provided input who is part of the National  
21 Child Development Center and has a center that he started up  
22 in the District that Bill got a lot of material from and a lot  
23 of guidance from that I would like to send that to also.

24 CHAIRPERSON KRESS: Then let's formally leave  
25 the record open.

26 MR. COLBY: Yes, for whatever length of time,

1 and I'll make sure I get both, at least those two sets of  
2 comments.

3 CHAIRPERSON KRESS: Okay, good. Questions for  
4 Office of Planning?

5 Commissioner Clarens.

6 COMMISSIONER CLARENS: The mirroring of the  
7 elderly and the child in the level of restriction in different  
8 zoning categories, I'm having a little bit of difficult  
9 because the impact, as you just mentioned in the case that you  
10 mentioned when you were talking, the impact on the community  
11 is not a mirror impact.

12 A child development center, by its own nature,  
13 will have a greater impact in terms of traffic, access,  
14 dropping off, noise, play area, activity, et cetera, et  
15 cetera, that an elderly center might not generate, and yet in  
16 the proposal we are mirroring the two. We are actually  
17 applying the same restrictions.

18 Have you given that any thought? It sort of  
19 struck me that we were creating this sort of mirror, you know,  
20 in which I'm getting closer to one side of the mirror than the  
21 other end of the mirror where I used to be.

22 (Laughter.)

23 COMMISSIONER CLARENS: And I'm finding a  
24 parallel which might not quite be there, and I don't know if  
25 there might be any wisdom in making some adjustments there.

26 MR. COLBY: First of all, in most cases, the



1 Board will have the opportunity to make those adjustments to  
2 the extent that the Board is aware of the differences. So  
3 that's probably most important.

4 Secondly, there's been very little involvement  
5 by the District in elderly day care. I mean in terms of  
6 licensing, it's like it's not there, and it just occurs, as I  
7 said, in C-1. Right now it doesn't occur in residential zoned  
8 districts, in spite of what you said.

9 Third, I think I would agree that you don't have  
10 the play areas. You don't have the noise, and you don't have  
11 all -- some of which is very positive, but on the other hand,  
12 it can have adverse impacts.

13 But, on the other hand, there are probably a few  
14 other associated caregivers, medical care or other things,  
15 that go with a child development center -- I mean an adult  
16 development center -- that more people coming in. There's  
17 probably a higher ratio of staff, but I don't know that, staff  
18 to those being cared for with adults than with children. I  
19 could be wrong, but that's my sense.

20 So, in part, because I don't know and, in part,  
21 because in these things I always fall back on the Board and  
22 say, well, the Board will know because they'll have the  
23 specifics of the case in front of them, as well as have an  
24 opportunity for the community to provide input, I think they  
25 probably do not mirror, but I'm not sure that the differences  
26 will be that different.

1                   The break points are fairly simple right now.  
2           It's home day care. It's a child development center, and then  
3           you add some counseling basically, and of course, you can  
4           combine the two. That's it.

5                   So I'm not sure that you'd say, well, maybe R-3  
6           is okay for elderly day care centers rather than R-4. I mean  
7           I don't know how to think about it that way, in spite of I  
8           think the question was valid.

9                   COMMISSIONER CLARENS: I know, and I mean, I  
10          don't know where to draw the line either, and I guess you've  
11          drawn it where it used to be, and you have simply applied it  
12          to both cases.

13                  The other issue has to do with do I understand  
14          correctly that a child development center might have cross-  
15          generational or intergenerational care and vice versa, that an  
16          elderly day care center can also have child development  
17          facility, that both are --

18                  MR. COLBY: As proposed.

19                  COMMISSIONER CLARENS: As proposed?

20                  MR. COLBY: Yeah, they're really one and the  
21          same. I mean, at some point it's half and half.

22                  COMMISSIONER CLARENS: So basically you are  
23          really creating almost an equality between the two. You're  
24          saying they're really interchangeable or even mixable, if  
25          that's a word.

26                  MR. COLBY: Well, now, the letter from Allen

1 Young Fatah suggests that you would be careful about mixing  
2 the two, that they really have different space, different  
3 programs, that they come together as appropriate, but other  
4 than that they are very separate.

5 COMMISSIONER CLARENS: That's right, which is  
6 true.

7 CHAIRPERSON KRESS: But it does recognize the  
8 trends and the philosophy of care for the future and the  
9 intermixing. I think that's why, when we talked about it, why  
10 this was evaluated, and for right now I think -- and I think  
11 it was well taken in the licensing letter -- that these are  
12 very different, and people need to be trained differently.

13 That's not our concern, and I think what happens  
14 is that we allow for that licensing to change in the future by  
15 giving them the space that's similar and interchangeable, and  
16 then as licensing changes, we have basically a format in which  
17 both work, I think.

18 COMMISSIONER CLARENS: Under these regulations,  
19 the proposed regulations, the fact that the services people  
20 can -- there's a phrase here that says "shall be present for  
21 less than 24 hours per day." What is the purpose of that, and  
22 how in the world can it be policed? Less than 24 hours is 23  
23 hours and 59 minutes, and so it means that the person leaves  
24 for a minute, the home, and comes back in, I mean?

25 MR. COLBY: I can't answer your second question.  
26 Your first question though is answered by the fact that there

1 is, like the height limit in the District, which is  
2 sacrosanct, so is there a family limit or size of persons  
3 living in a home who are unrelated by blood, and this is, I  
4 have to assume, a form of keeping that, of being consistent  
5 with that.

6 And so that if you live there, if you spend the  
7 night there, I mean, it's not a hotel because you're so young,  
8 but at some point I'm not sure that it makes sense, but I  
9 think I know where it comes from.

10 I mean< I think that there is --

11 CHAIRPERSON KRESS: That's the way the child  
12 care is written already.

13 MR. COLBY: Why wouldn't there be a need for a  
14 place?

15 CHAIRPERSON KRESS: The child care is written  
16 the same way already.

17 MR. COLBY: Yes, and licensing.

18 CHAIRPERSON KRESS: In 24 hours, it becomes a  
19 home.

20 MR. COLBY: Yeah.

21 CHAIRPERSON KRESS: And just they're saying  
22 anything less than that. It is a little silly because you  
23 could just walk around the block and come back in.

24 MR. COLBY: But if we had somebody here from  
25 Licensing, you could ask them that question, and you could get  
26 them to tell you probably more clearly that that's a good idea

1 or a bad idea. Did it come from zoning or did it come from  
2 licensing?

3 COMMISSIONER FRANKLIN: Well, why not just  
4 simply say "shall not reside at the premises"?

5 MR. COLBY: I can't answer that. That's a good  
6 alternative.

7 CHAIRPERSON KRESS: I wouldn't make a change  
8 without coordinating that with Licensing. These are going  
9 hand in hand.

10 MR. COLBY: Yes.

11 CHAIRPERSON KRESS: And I think, again, since  
12 you're going to be coordinating with Licensing, why don't we  
13 bring this question --

14 MR. COLBY: Okay.

15 CHAIRPERSON KRESS: -- to Licensing and ask that  
16 a response be given to this during the time we keep the record  
17 open? How's that? Is that all right with you Commissioner?

18 COMMISSIONER CLARENS: Yeah, I think that that's  
19 fine. I think that the proposal of Commissioner Franklin is,  
20 you know -- I think that what we are concerned about is that  
21 these people will be residing at these facilities. Then it  
22 seems to me that we should go for that idea and say rather  
23 than this 24-hour thing, which is difficult to enforce and  
24 easy to circumvent.

25 MR. COLBY: But under that definition, could  
26 spend the night if circumstances required that. There's no

1 build-up when no one could get there and no one picked them up  
2 and so on.

3 COMMISSIONER CLARENS: Yes, right, right. They  
4 could spend the night.

5 MR. COLBY: Yeah, and not reside there.

6 CHAIRPERSON KRESS: Like speaking of snow  
7 recently.

8 COMMISSIONER CLARENS: That's right. They could  
9 spend 48 hours in the place, but they're not residents there.

10 MR. COLBY: Yes.

11 COMMISSIONER CLARENS: You just happen to be  
12 there as guests for 24 or 48 hours.

13 MR. COLBY: Yeah.

14 COMMISSIONER CLARENS: Otherwise, I don't have  
15 any other comment that I can think of right away, except that  
16 I think that it is a welcome change. I'm only wondering if  
17 the definition of child development center we have to go into  
18 this explanatory reasoning for the change and to explain why  
19 it is that it comes about because the facilities are used for  
20 counseling and education.

21 And I'm not objecting to it. I'm just wondering  
22 if they belong in the definitions, and that's just a question.

23 CHAIRPERSON KRESS: Well, I will answer that,  
24 that in sitting on the BZA when we had several child care  
25 cases come, I saw on several of them, and the issue kept  
26 coming up that we were having to turn them down because

1       legally they were doing what would be called counseling, even  
2       though they only talked to the parents a few minutes.

3                   COMMISSIONER CLARENS:   Right.

4                   CHAIRPERSON KRESS:   They were legally doing what  
5       was called training, and that's the reason these words got  
6       into this definition, is because in sitting on the other side  
7       of that, we were turning down cases because something was  
8       falling, and we got into big arguments whether that was really  
9       this or really that.

10                  COMMISSIONER CLARENS:   I understand.   My only  
11       problem is with the beginning of that whole area.

12                  MR. COLBY:   Yes, the first clause.

13                  COMMISSIONER CLARENS:   Which says "because of  
14       the recognized importance of the health, safety, and welfare  
15       of the whole family" --

16                  COMMISSIONER FRANKLIN:   Yeah, it's  
17       inappropriate.

18                  CHAIRPERSON KRESS:   Oh, I see.

19                  COMMISSIONER CLARENS:   We just basically said  
20       these are regulations.   So we don't need to be apologetic for  
21       how it is.   So if we basically say --

22                  COMMISSIONER FRANKLIN:   The sentence should  
23       begin with "the facility."

24                  CHAIRPERSON KRESS:   I see.

25                  COMMISSIONER CLARENS:   The facility may also be  
26       used for the counseling, education, training, and health

1 services, et cetera, et cetera, without having to say why  
2 we're allowing that.

3 CHAIRPERSON KRESS: I'm sorry. I misunderstood  
4 you. Yes, I think that's a good suggestion.

5 MR. COLBY: That's fine.

6 COMMISSIONER CLARENS: And then finally, I  
7 really am very pleased that we're moving in the direction of  
8 eliminating the word "temporary" from community service  
9 center.

10 (Laughter.)

11 COMMISSIONER CLARENS: I think that that is  
12 something that I struggled for six years in the BZA with this  
13 notion of the temporary community service center, and I'm glad  
14 that is going.

15 CHAIRPERSON KRESS: Great.

16 COMMISSIONER HOOD: I just have one question,  
17 and it probably doesn't even have any merit, but basically I  
18 noticed when we were dealing with the children we were talking  
19 about an age limit. For the elderly do we have an age limit?

20 MR. COLBY: You all asked us that last when we  
21 sat down, but we don't have an answer. I mean we tried to  
22 answer it. What we have found is people are accepted for  
23 these --

24 CHAIRPERSON KRESS: The lower limit.

25 COMMISSIONER HOOD: The lower limit, like 62 or  
26 63.



1 MR. COLBY: Yeah, the lower limit.

2 COMMISSIONER HOOD: I guess I always have a  
3 concern when things are a matter of right because it takes the  
4 ability of the community to be able to express their concerns,  
5 and when I read this, I started bringing in a lot of other  
6 components, you know, when we talk about age limit.

7 MR. COLBY: Yeah, yeah.

8 COMMISSIONER HOOD: Somebody could say they're  
9 elderly at 45, and I see this going hand in hand with the  
10 CDRFs from the way I read it. Now, I may have misunderstood  
11 it, but I was just wondering if there was an age limit.

12 CHAIRPERSON KRESS: I'm sorry. Why do you think  
13 it goes hand in hand with CDRFs?

14 COMMISSIONER CLARENS: Well, only because it is  
15 something that is going to be in residential districts that is  
16 not a typical --

17 CHAIRPERSON KRESS: Single family home.

18 COMMISSIONER CLARENS: -- single family home or  
19 a home or dwelling unit, and therefore, it has some --

20 COMMISSIONER HOOD: Mr. Clarens, you have  
21 explained that better than I would have.

22 COMMISSIONER CLARENS: No.

23 COMMISSIONER HOOD: But I was just saying as far  
24 as like R-4. CDRF is in R-4, and I was looking at the chart  
25 here on page 16 and R-4, and a lot of things are a matter of  
26 right, and I was just, you know, putting those hand in hand.

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1 MR. COLBY: We made very little changes to the  
2 existing structure, and you are pointing out something about  
3 the existing structure which has existed for however long  
4 these regulations have been in place.

5 COMMISSIONER HOOD: Okay, okay.

6 MR. COLBY: We perhaps could and should have  
7 examined that and did not, basically said, "Oh, somebody's  
8 been here before. We'll just follow their footsteps."

9 COMMISSIONER HOOD: So in other words, this  
10 chart is already existing.

11 MR. COLBY: Yeah.

12 COMMISSIONER HOOD: Because when I look at it I  
13 see "proposed."

14 MR. COLBY: Right.

15 COMMISSIONER HOOD: Okay.

16 MR. COLBY: And in answer to your question --

17 COMMISSIONER FRANKLIN: Well, are you saying to  
18 Mr. Hood that you are not introducing these facilities as a  
19 matter of right in zones where they're not now a matter of  
20 right, regardless of the definition for the moment? I mean,  
21 are child centers being allowed as a matter of right, for  
22 example, within zones under this proposal that they are not  
23 allowed --

24 MR. COLBY: No, no change.

25 COMMISSIONER FRANKLIN: No change. Okay.

26 MR. COLBY: As regards the age, and I want you

1 to react to this because I think this is the situation that  
2 exists. I had a friend who has since died who contracted  
3 multiple sclerosis at an age earlier than he should have. I  
4 grew up with him and sort of went through all the schools with  
5 him, and so on.

6 He went to -- at some point couldn't -- lived in  
7 Georgetown -- couldn't get around and moved to San Francisco  
8 into a care facility, an apartment building which provided all  
9 kinds of care, and everybody else there was far older than he  
10 was. They were happy to have him because he was like the  
11 child, mixing the intergenerational care, and I think he was a  
12 little off-put by being with everybody who was so much older,  
13 but that was where he had to be.

14 I'm sure there are examples of that that don't  
15 fit and you wouldn't want to fit and say that they fit into a  
16 normal elder care situation because they would require more  
17 helpers or more something and there would be more impacts, but  
18 there are people who either because they lost some mental  
19 capacity who need that care and can't take care of themselves,  
20 and it doesn't always fall on the age where you might expect  
21 it to fall.

22 And that's why if you set what would be almost  
23 an arbitrary age, then you're going to exclude some people  
24 whom you have no real reason or you wouldn't really want to  
25 exclude if you knew who they were.

26 CHAIRPERSON KRESS: And isn't it also true when

1       this came up last time? I think we discussed the fact that  
2       there isn't any standards, either federally or locally, and I  
3       don't mean --

4                   MR. COLBY: No.

5                   CHAIRPERSON KRESS: -- for elder care, as to a  
6       limit of age, where there are for youth, and codes and  
7       whatnot? But there isn't anything really federally or  
8       locally.

9                   MR. COLBY: I guess the answer is people develop  
10      when they're young at a fairly standard --

11                  CHAIRPERSON KRESS: That's a good point.

12                  MR. COLBY: -- predetermined manner, but they  
13      don't age in the same way. They age very differently.

14                  COMMISSIONER CLARENS: But there's also sort of  
15      commonly held sort of notions about senior citizen  
16      nomenclature and the elderly, et cetera, et cetera, and they  
17      might range anywhere from what? Fifty-five to --

18                  COMMISSIONER FRANKLIN: Well, you can be 50 and  
19      be a member of the American Association of Retired Persons.

20                  CHAIRPERSON KRESS: I just said when I turned 50  
21      that was the first thing I got, was an invitation to join  
22      AARP, yeah.

23                  MR. COLBY: And I'm not sure what's gained by  
24      setting the limit, but I do know you're going to exclude some  
25      people if you set it there, and again, I'd rather Licensing  
26      take the lead on that if they're inclined to, but they haven't

1       been involved in elder care to date.

2                   COMMISSIONER HOOD:   Okay.   Also, I'll just be  
3       glad to see the comments that come back once they review your  
4       report.

5                   MR. COLBY:   Me, too.

6                   CHAIRPERSON KRESS:   Did you want to pursue the  
7       age any further, Commissioner Clarens?   Commissioner Hood?

8                   COMMISSIONER HOOD:   Oh, no, no.

9                   COMMISSIONER CLARENS:   No.

10                  CHAIRPERSON KRESS:   Okay.   Commissioner  
11       Franklin, do you want to?

12                  COMMISSIONER FRANKLIN:   No, I don't have any  
13       questions at this time.   I think they've been covered by the  
14       previous questions.

15                  COMMISSIONER PARSONS:   No questions.

16                  CHAIRPERSON KRESS:   All right.   Thank you.

17                  We only have one person in the audience, and  
18       since it's now time for persons in support, persons in  
19       opposition, ANC, anyone else to testify, are you here to  
20       testify tonight or just listen?

21                  I'm sorry.   You won't be on the record.   If  
22       you're just here to listen, I guess it's not --

23                  MR. BASTIDA:   She's with Corporation Counsel,  
24       and she's one of the persons who would be assigned to the  
25       Office of Zoning to work on Zoning matters.

26                  CHAIRPERSON KRESS:   Terrific.   Happy to meet

1       you.  You're getting a very raucous meeting tonight.

2                   PARTICIPANT:  A little unusual.

3                   CHAIRPERSON KRESS:  Yeah, a little unusual.  I

4       can't remember the last time we had absolutely nobody in the

5       audience.  Does anyone remember a time?

6                   PARTICIPANT:  Never.

7                   CHAIRPERSON KRESS:  I don't ever remember it.

8                   COMMISSIONER FRANKLIN:  This is highly unusual.

9                   Did you mention your name?

10                  MS. NAGELHOUT:  Mary Nagelhout.

11                  COMMISSIONER FRANKLIN:  Mary?

12                  MS. NAGELHOUT:  Nagelhout.

13                  MR. BASTIDA:  N-a-g-e-l-h-o-u-t.

14                  CHAIRPERSON KRESS:  Well, with no more

15       testimony, I guess we're prepared to -- do you have a closing

16       statement

17                  MR. BASTIDA:  Do you have it with you?

18                  CHAIRPERSON KRESS:  Oh, did you already give it

19       over to -- is there any other further discussion?

20                  COMMISSIONER FRANKLIN:  Well, Madame Chair,

21       there's another matter totally unrelated.

22                  Mr. Bastida, did you want us to do anything

23       about this?

24                  CHAIRPERSON KRESS:  Well, let's close this

25       hearing.

26                  MR. BASTIDA:  Oh, no, I didn't want you to do

1 anything.

2 COMMISSIONER FRANKLIN: Oh, okay.

3 MR. BASTIDA: I'll let you know.

4 CHAIRPERSON KRESS: Okay. Go ahead.

5 MR. BASTIDA: I don't need you to do anything.

6 I was just trying to find the background so in that way

7 Corporation Counsel has advised me what to do.

8 CHAIRPERSON KRESS: What are you talking about?

9 MR. BASTIDA: About the letter.

10 COMMISSIONER FRANKLIN: We can go off the

11 record. We can close the hearing and then discuss that.

12 CHAIRPERSON KRESS: Yeah. There's a letter.

13 All right.

14 Well, let me go ahead and close the hearing.

15 Before I do that I wanted to ask how long do you think we

16 should keep the record open to allow you to receive what you

17 need to receive?

18 MR. COLBY: If a month isn't too long for you, I

19 think it's plenty of time for me.

20 CHAIRPERSON KRESS: A month? All right. Do you

21 have a date that you can give us, Mr. Bastida?

22 MR. BASTIDA: Yeah, that would be -- do you want

23 approximately a month?

24 COMMISSIONER CLARENS: Wait a minute. Is this

25 coming back as another hearing?

26 CHAIRPERSON KRESS: Oh, no, no, no.

1 COMMISSIONER CLARENS: This is just coming back  
2 for a meeting?

3 CHAIRPERSON KRESS: No, we leave the record open  
4 --

5 COMMISSIONER CLARENS: For a decision?

6 CHAIRPERSON KRESS: -- before our decision so  
7 then at the time we go to make our decision, we will have the  
8 information that came in after the close of our record, and we  
9 will discuss it at the time we make our decision.

10 MR. BASTIDA: Your next meeting is the 12th of  
11 April, and that is approximately a month. If you keep it open  
12 until then, you will not be able to make a decision until May.

13 COMMISSIONER CLARENS: May sounds good to me.

14 MR. BASTIDA: Okay. Then you can leave the  
15 record open until April the 12th.

16 CHAIRPERSON KRESS: Okay. Why don't we do that?

17 MR. BASTIDA: Or you can go even a little longer  
18 if you so wish because your May meeting is the 10th.

19 CHAIRPERSON KRESS: Well, you can decided. As  
20 far as I'm concerned, this is --

21 MR. BASTIDA: Why don't we leave it open until  
22 April 23rd, which is a Friday?

23 CHAIRPERSON KRESS: All right. All right.

24 MR. COLBY: Fine.

25 CHAIRPERSON KRESS: All right. April 23rd.

26 MR. BASTIDA: Friday, April 23rd, 1999.



1 COMMISSIONER CLARENS: And the Office of  
2 Planning will contact the Health Department; is that correct?  
3 MR. COLBY: And anybody else who --  
4 COMMISSIONER CLARENS: And anybody else as you  
5 mentioned in your record.  
6 CHAIRPERSON KRESS: Now, as far as I'm  
7 concerned, I think we're leaving the record open for the  
8 individuals that you worked with before and the various  
9 agencies. I don't want to just restrict it.  
10 MR. COLBY: Right.  
11 CHAIRPERSON KRESS: If when you go back through  
12 there's somebody else that you have forgotten to mention.  
13 MR. COLBY: Right, fine.  
14 MR. BASTIDA: For clarification, you are leaving  
15 the record open for previous people who have been involved  
16 with the Office of Planning?  
17 CHAIRPERSON KRESS: Other agencies and  
18 individuals who are involved with the Office of Planning in  
19 commenting and in preparing this case.  
20 MR. BASTIDA: Okay. Thank you.  
21 CHAIRPERSON KRESS: All right. With that then  
22 I'll quick close and say, ladies and gentlemen and other  
23 members of the Commission, I thank you for your testimony and  
24 assistance in this hearing.  
25 The record in this case will be kept open until  
26 April 23rd for the submission of any additional information.

1       The report should be filed at the Office of Zoning, 441 Fourth  
2       Street.

3                   The Commission will make a decision on this case  
4       at one of its regular meetings following the closing of the  
5       record.

6                   You should be aware that if the Commission  
7       proposes affirmative action, the proposed action must be  
8       referred to the National Capitol Planning Commission for  
9       federal impact review.

10                  The Commission will take final action at a  
11       public meeting following receipt of the National Capitol  
12       Planning Commission review, after which a written order will  
13       be published.

14                  I now declare this hearing closed.

15                  (Whereupon, at 8:05 p.m., the hearing in the  
16       above-entitled matter was closed.)